IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.06.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Second Appeal No.1513 of 1996

Booji .. Appellant/Plaintiff

Versus

Chinnavan .. Respondent/2nd Defendant

Appeal against the fair and decreetal order, dated 7.8.1996, made in A.S.No.6 of 1995, on the file of the Sub-Court, Tirupattur, N.A.A.District, partly reversing the fair and decreetal order, dated 13.12.1994, made in O.S.No.503 of 1977, on the file of the Principal District Munsif Court, Tirupattur, N.A.A. District.

For Appellant : Mr.J.Saravanavel
For Respondent : No Appearance

J U D G M E N T

This second appeal has been filed against the judgment and decree of the Sub-Court, Tirupattur, dated 7.8.1996, made in A.S.No.6 of 1995, partly reversing the judgment and decree of the Principal District Munsif Court, Tirupattur, dated 13.12.1994, made in O.S.No.503 of 1977.

2. The plaintiff in O.S.No.503 of 1977 is the appellant in the present second appeal. The suit had been filed, praying for a judgment and decree to declare the right, title and interest of the plaintiff in the suit properties and for a permanent injunction against the defendants, their men and agents, restraining them from interfering with the peaceful possession and enjoyment of the suit properties by the plaintiff and for costs of the suit and for other reliefs.

3. The brief facts of the case, as stated by the plaintiff, are as follows:

The suit properties are ancestral properties. The plaintiff is in possession and enjoyment of the suit properties. The plaintiff had sold the suit properties to one Mariappan with an agreement of reconveyance and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

had also effected reconveyance. The plaintiff had given the properties as security for a chit fund transaction, which was being managed by the first defendant. Therefore, the title deed of the properties concerned was with the first defendant. Even though the chit amount had been discharged, the first defendant had not returned the title deed. The plaintiff is in possession of the properties and the patta for the suit lands stands in his name and he is paying the kist for the said properties. The plaintiff has been cultivating the said lands with sugarcane, redgrams and other crops. The first defendant had lent a sum of Rs.4,000/- to the plaintiff on a pronote and for which the plaintiff had given him 75 bags of jaggery, 2 years after the execution of the pronote and 65 bags of jaggery and 2 putties of paddy, four years thereafter. The plaintiff had also given a sum of Rs.5,500/- in cash to the first defendant, without accounting for the repayment made him, both in kind and in cash. The defendants had obtained the plaintiff's thumb impression on three blank pronotes. This has been done by the defendants to illegally take possession of the suit properties from the plaintiff. The defendants had been attempting to commit trespass on the suit properties belonging to the plaintiff. Further, the defendants had attempted to destroy the crops cultivated by the plaintiff in the suit properties and have also attempted to remove the bricklin belonging to the plaintiff and hence, the plaintiff had filed the suit in O.S.No.503 of 1977, praying for a decree of declaration and for permanent injunction.

4. Denying the claims made by the plaintiff, the defendants have filed separate written statements:

a) The first defendant had stated that the claim made by the plaintiff that he had executed a bond for a sum of Rs.4,000/- borrowed by him and that he had repaid the amount both by cash and in kind is false. The plaintiff has falsely stated that he had affixed his thumb impression on 3 blank pronotes. In fact, the plaintiff had borrowed a sum of Rs.7,000/-, on 1.8.1973, by executing a bond. Further, he has borrowed various amounts of money from the first defendant and others and he had not repaid the same.

b) In the written statement filed by the second defendant, it has been stated that the claims of the plaintiff that he had affixed his thumb impression on blank pronotes is totally false and it is the plaintiff, who has to prove his claims. By an agreement, dated 28.10.1976, the plaintiff, after accepting a sum of Rs.75/-, had permitted the second defendant to have a brick kiln in 10 cents of land, out of the 73 cents, in Survey No.353/3. The statement made by the plaintiff that the second defendant has attempted to encroach on the properties belonging to the plaintiff and that he has attempted to take possession on the same are absolutely false, since the second defendant had no intention of taking possession of the suit properties, illegally, as claimed by the plaintiff. The second defendant has no claims with regard to the suit properties, except with regard to the brick kiln, which is on the 10 cents of land in Survey No.353/3 of the suit properties. In such circumstances, the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

plaintiff is not entitled to the relief of injunction, without claiming the relief of recovery of possession.

c) In the written statement filed by the third defendant, it has been stated that the plaintiff had borrowed a sum of Rs.8,250/- from the third defendant by executing a pronote, dated 19.7.1972. The plaintiff had paid a sum of Rs.300/-, on 21.7.1973, as interest for the loan amount. The plaintiff has not paid any other amount to discharge his liability. The third defendant had issued an appropriate notice with regard to the loan amount, due to be paid by the plaintiff. Since the suit filed by the plaintiff is based on false claims, it is liable to be dismissed.

d) The fourth defendant, in his written statement, has stated that there are no details about the claims made by the plaintiff in the plaint filed by him in O.S.No.503 of 1977. It is only with the malicious motive of causing unnecessary harassment to the fourth defendant, the plaintiff has filed the suit. The claims made by the plaintiff are totally false and therefore, the suit deserves to be dismissed.

5. Based on the averments made by the plaintiff as well as the defendants, the trial Court had framed the following issues for consideration:

> "(i) Whether the agreement, dated 28.10.1976, as mentioned by the second defendant is genuine?
>
> (ii) Whether the second defendant is entitled to keep the brick kiln, located in the land measuring 10 cents in the suit property, under his possession?
>
> (iii) Whether the brick kiln was in possession of the plaintiff at that time of the filing of the suit? Whether the plaintiff has any right over the brick kiln?
>
> (iv) Whether it is true to allege that the defendants had trespassed into the suit property, on 17.12.1977?
>
> (v) Whether the defendants 1 and 3 are unnecessary parties to the suit? Whether the defendants 1 and 3 are eligible to get exemplary costs?
>
> (vi) What other reliefs the plaintiff is entitled to?"

WEB COPY

6. The trial Court had framed the following issues as additional issues, on 7.4.1986.

> "(i) Whether the details and boundaries of the suit property are wrongly mentioned?
>
> (ii) Whether the fourth defendant is an unnecessary party to the suit?"

7. Based on the evidence adduced on behalf of the plaintiff, as well as the defendants and considering the report and the sketch filed by the

https://hcservices.ecourts.gov.in/hcservices/

Commissioner, the trial Court, while examining the issue with regard to the alleged agreement, dated 28.10.1976, marked as Ex.B-1, had come to the conclusion that the alleged agreement is not true.

8. The trial Court had also come to the conclusion that the brick kiln was in possession of the plaintiff and that he had the right in it, at the time of the filing of the suit. Further, the trial Court had found that the second defendant had no right in the brick kiln in the 10 cents of the land forming part of the suit properties and also that the second defendant was not in possession of the said brick kiln.

9. The trial Court had also found that the description of the properties and boundaries had been properly given by the plaintiff in his plaint filed in the suit in O.S.No.503 of 1977. It was further found that the defendant had attempted to encroach on the suit properties, on 17.12.1977, as claimed by the plaintiff. The trial Court had also found that the defendants 1 and 3 were proper and necessary parties. Thus, the trial Court had come to the conclusion that the plaintiff is entitled to the reliefs prayed for in the suit O.S.No.503 of 1977.

10. Aggrieved by the judgment and decree of the trial Court, dated 13.12.1994, made in O.S.No.503 of 1977, the second defendant had preferred an appeal before the Sub-Court, Tirupattur, in A.S.No.6 of 1995.

11. Based on the rival contentions and on the evidence available on record, the lower Appellate Court, had framed the following points for consideration.

> "(i) Whether it is true that the plaintiff had executed Exhibit B.1 agreement in favour of the second defendant for the formation of brick kiln in the land measuring 10 cents out of the 73 cents of land in Survey No.353/3?
>
> (ii) Whether the judgment and decree passed by the trial Court is to be confirmed?"

12. The lower Appellate Court had found that the trial Court was right in granting the reliefs of declaration and permanent injunction as prayed for by the plaintiff. However, based on the expert evidence of the Handwriting expert and based on the oral evidence adduced in support of the defendants, the lower Appellate Court had come to the conclusion that the agreement , dated 28.10.1976, marked as Exhibit B.1, made by the plaintiff in favour of the second defendant with regard to the 10 cents of land in Survey No.363/3, is true and valid. It has also been found that the second defendant had established the brick kiln in the 10 cents of the land out of the 73 cents in Survey No.353/3, forming part of the suit property. Therefore, the lower Appellate Court had come to the conclusion that the relief granted by the trial Court in favour of the plaintiff, with regard to the 10 cents of land in Survey No.353/3, is incorrect. Thus, the lower Appellate Court had allowed the appeal in part and granted the relief to the plaintiff with regard to the suit properties, except the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10 cents of land, found to be forming part of the agreement, dated 28.10.1976, marked as Ex.B-1.

13. The plaintiff has filed the present second appeal challenging the judgment and decree of the lower Appellate Court, dated 07.08.1996, made in A.S.No.6 of 1995, partly reversing the findings of the trial Court. The appellant has raised various grounds forming part of the memorandum of grounds of appeal.

14. This Court had admitted the second appeal on the following substantial questions of law:

> "(1) Whether in a suit for declaration and permanent injunction it is necessary to pray for possessory title for the movable property encompassed in the suit scheduled properties?
>
> (2) Whether the first Appellate Court is correct in granting the relief of declaration and possession by negating the claim of the plaintiff to the second defendant even without paying the necessary Court-fees?
>
> (3) Whether an agreement for possession of land for 3 years from 28.10.1976, could be relied upon for granting possessory right in 1996 even without a prayer or claim by the second defendant in the manner known to law?"

15. The main point arising for consideration before this Court in the second appeal is, as to whether the agreement, dated 28.10.1976, marked as Exhibit B.1, has been sufficiently proved to be true and valid as held by the lower Appellate Court, while partly reversing the judgment and decree of the trial Court, dated 13.12.1994, made in O.S.No.503 of 1977.

16. The other point for consideration is as to whether the lower Appellate Court was right in holding that the second defendant had certain rights with regard to the brick kiln in the 10 cents of land in Survey No.353/3 in accordance with the said agreement, dated 28.10.1976.

17. Based on the agreement, dated 28.10.1976, marked as Ex.B-1, the lower Appellate Court had come to the conclusion that the second defendant was in possession of the brick kiln in the 10 cents of land forming part of S.No.353/3. While holding that the evidence of P.W.2 cannot be considered in favour of the plaintiff, since he was found to be an interested witness, the lower Appellate Court could not have based its conclusion on the evidence of D.W.3 and D.W.4, who were, admittedly, close relatives of the second defendant.

18. It was contended on behalf of the appellant that the lower Appellate Court had erred in concluding that the suit filed by the plaintiff for the relief of declaration and permanent injunction was not maintainable with regard to the 10 cents of land in Survey No.353/3. The

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

said conclusion has been arrived at by the lower Appellate Court based on a wrong finding that the plaintiff was not in possession of the brick kiln and that the brick kiln was set up by the second defendant, even though it was not an issue framed by the lower Appellate Court for consideration.

19. Even if the agreement, dated 28.10.1976, marked as Ex.B-1 is taken to be true, the lease period ought to have expired by the end of three years thereafter counting from the date of its execution. However, the lower appellate Court had passed its judgment and decree in the year 1996 holding that the second defendant was in possession at that time, even without a pleading being made by him, nor was there any evidence to show that the second defendant had extended the lease beyond the period of three years from the year 1976 or that he continued to be in possession after the expiry of the original lease period of three years.

20. At the stage of the final hearing of the present second appeal, the learned counsel appearing on behalf of the appellant had placed before this Court a certificate of the concerned Village Administrative Officer, which reads as follows:

சான்று

வேலூர் மாவட்டம் திருப்பத்தூர் தாலூக்கா பொம்மிகுப்பம் மதுரா தாதவலசை கிராமம் சர்வே நெம்பர் 353/3ல் 0,29,5 ஏர்ஸ் (0.73) சென்டு இதில் பூராவும் பொஜ்ஜி கவுண்டர் அவர்களின் அனுபவத்தில் உள்ளது என்று நான் சான்று அளிக்கிறேன்.

Further, the adangal extract has also been produced showing that the plaintiff is in possession of the 73 cents of land in S.No.353/3 which is the subject matter of the suit in O.S.No.503 of 1977. Based on the said documents, it has been contended by the learned counsel for the appellant that the possession of the suit properties is with the plaintiff. This claim made on behalf of the plaintiff has not been controverted by the respondent in the present second appeal.

21. In such circumstances, the judgment and decree of the lower Appellate Court, dated 07.08.1996 made in A.S.No.6 of 1995, partly reversing the judgment and decree of the trial Court, dated 13.12.1994, made in O.S.No.503 of 1977, is set aside. Consequently, the second appeal is allowed, confirming the judgment and decree of the trial Court, dated 13.12.1994. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

lan/csh

To

1. The Sub Judge, Tirupattur,
N.A.A.District

2. The Principal District Munsif Court,
Tirupattur, N.A.A. District.

3. The Section Officer,
V.R.Section, High Court,
Madras.

1 CC To M/s.P.V.Bakthavachalam, Advocate, SR NO.38582.

Second Appeal No.1513 of 1996

GK(CO)
RVL 30.08.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/